NOTE

DISTRICT OF COLUMBIA JUVENILE DELINQUENCY PROCEEDINGS: APPREHENSION TO DISPOSITION*

INTRODUCTION

While all agencies connected with the detention and treatment of juveniles in the District of Columbia issue annual reports which are available to the public, indications are that a widespread unawareness exists in both bar and judiciary as to the nature, purpose and effectiveness of the socio-legal system governing the disposition of the District's juvenile offenders. Since a concern for this system is a logical incident of any sensitivity toward the future order and tranquillity of society, the purpose of this note is essentially informational, to familiarize lawyers with the procedures and practices employed by the District of Columbia and United States Governments from the time a youth is apprehended by police until he is either returned on probation to his home or committed to a juvenile training school, in either contingency by the Juvenile Court of the District of Columbia acting pursuant to the provisions of the Juvenile Court Act.[1]

The thread of analysis follows only those police and Juvenile Court operations having to do with juvenile deliction, by which is meant actual violation of the law by a youth below the age of eighteen. In its broadest application in this jurisdiction, the term "juvenile delinquency" includes truancy, conduct habitually beyond the control of parents, association with vagrant, vicious, or immoral persons, or deportment such "as to injure or endanger the health and safety of others";[2] but as these conditions do not partake of the classically criminal characteristics of delinquency, they will not be discussed. Neither is the court's additional jurisdiction over dependency, paternity, and adult criminal cases treated.[3] Similarly

* The Georgetown Law Journal wishes to acknowledge the indispensable assistance of numerous Juvenile Court, Metropolitan Police Department and Department of Public Welfare officials without whose informal and spirited cooperation this effort to present an abbreviated but accurate account of the District of Columbia juvenile system would not have been possible.

1 52 Stat. 596 (1938), as amended, D.C. Code Ann. §§ 11-901, -42 (1951), as amended, D.C. Code Ann. §§ 11-901, -42 (Supp. VIII, 1960).

2 52 Stat. 596 (1938), D.C. Code Ann. § 11-906 (1951).

3 52 Stat. 596 (1938), as amended, 54 Stat. 735 (1940), D.C. Code Ann. §§ 11-906, -07 (1951).

omitted is any description of the institutions and methods of treatment involved once a case has been passed upon by the Juvenile Court judge, with the single significant exception of the post-disposition power of the Attorney General of the United States to transfer inmates of the National Training School for Boys to federal prisons for adult criminals. A resume of the limited case law which has reviewed District juvenile proceedings is integrated with the general discussion.

A brief insight into the rationale supporting the juvenile system will be of assistance at the outset. The philosophy underlying the procedure in cases involving a juvenile accused of committing an act, which if committed by an adult would amount to a crime, is that the delinquent child is to be "considered and treated not as a criminal, but as a person requiring care, education and protection."[4] Since rehabilitation rather than punishment is the end to be obtained, the proceedings by which the child is found to be in need of and subjected to such "care, education and protection" are characterized as civil in nature. And since the proceedings are civil in nature it follows that the constitutional safeguards for those accused of crime and the rules of procedure and evidence employed in criminal trials are not applicable. The extent to which the authorities are able to implement this informal design is implicitly incorporated in the descriptive study that follows.

I

THE POLICE AND JUVENILES

The formal processing of a delinquent which may eventually receive courtroom review usually begins in an arrest or, as it is carefully termed, "apprehension" by a police officer somewhere in the District of Columbia. The juvenile is taken to a precinct headquarters where, once his age is determined to be below eighteen, a call is placed for the Youth Aid Division of the Metropolitan Police Department. Youth Aid dispatches a Juvenile Squad car to the precinct, and with the meeting of juvenile and Juvenile Squad officers, a theoretical separation from conventional adult criminal procedures occurs.

The Youth Aid Division was formed in 1955[5] as a special police arm designed to cope with the unique status of juvenile offenders and the special problems posed in their handling under District of Columbia law. Members of the Division are normally not selected for juvenile duty

[4] Thomas v. United States, 74 App. D.C. 167, 170, 121 F.2d 905, 908 (1941).

[5] Gen. Order No. 1, D.C. Metropolitan Police Dep't (Jan. 1, 1956).

unless they possess five years of police experience. The approximately 85 staff members, including 30 women, are given a 48-hour course in juvenile procedures upon entering the Division. The Division's purpose, briefly stated, is to prevent and combat juvenile delinquency from a central organization by methods divorced from ordinary police techniques and oriented generally to the principle of juvenile rehabilitation which presumably motivates the actions of all agencies and government officials concerned with youthful offenders in the District of Columbia. In order to expedite the contact between Youth Aid and wayward juveniles apprehended for delinquency, the Division maintains patrol cars on the city streets 24 hours a day. Thus it is that within a brief space of time following apprehension the boy or girl is in the hands of special officers.

Their first step is to notify parents or relatives. Police experience has been that in more cases than not, parents do not bother to appear at the station house. The officers commence investigation by interrogation, the thrust of all preliminary efforts being primarily to avoid any booking. Under the statute, juveniles cannot be considered criminals;[6] it follows that all records of a criminal nature, including names in a precinct's arrest records, are undesirable, and Division operations attempt to bypass that eventuality by weighing the evidence before entering a charge.

The investigators use the precinct as field headquarters, however, and the delinquent will be kept there during the inquiry. Precinct detention is frequently extended for a matter of hours while police search for other juveniles implicated by the youth arrested. Such implication is commonplace since juveniles have a proclivity for finding trouble collectively. But while the first youth apprehended may be forced to wait, he waits in an open reception area of the precinct or in a side office, and absent a violent attitude, is not locked behind bars in violation of the statute.[7]

When sufficient evidence appears to make detention of the boy necessary, *i.e.*, when the Youth Aid officers determine probable cause, he is booked[8] and committed to the Receiving Home for Children at 1000

[6] 52 Stat. 600 (1938), D.C. Code Ann. § 11-915 (1951); Pee v. United States, 107 U.S. App. D.C. 47, 49-50, 274 F.2d 556, 558-59 (1959); Thomas v. United States, 74 App. D.C. 167, 170, 121 F.2d 905, 908 (1941).

[7] 52 Stat. 602 (1938), D.C. Code Ann. § 11-927 (1951).

[8] The practice of placing juvenile arrests on the Records-of-Arrest book in the precincts was discontinued in 1956, in keeping with the concept that juveniles shall have no criminal record. However, Police Form 255 (Record of Arrest) is made out in quadruplicate, three

Mt. Olivet Road, N.E.[9] Alternatively, in cases of minor offenses of a nonviolent nature, the boy may be released in the custody of his parents unless such a course is, in the words of the statute, "impracticable."[10] This latter determination is left to the discretion of the police, who use the nature of the offense as a principal criterion. Release involves a signed statement by the parent that he or she agrees to produce the juvenile in court. Frequently parental indifference compels the police to transport the youth home from the station house.

Rare cases occur when a complaint filed by a citizen together with the existence of evidence tending to show guilt will require that police arrest a juvenile sometime after an offense has been committed. No warrant is needed for Youth Aid officers to make such an arrest since, as noted, no juvenile is charged with a crime.[11] Arrest itself is a concept technically alien to juvenile processing. Instead, juveniles are "apprehended"; but while there is this studied distinction made, a difference is hard to perceive.[12] The police do, however, obtain warrants of search when the investigation requires intrusion into a private home, obviously because adult rights then hang in the balance and the license of informality in the handling of juveniles no longer obtains.

The large majority of cases, however, involve apprehension at or near the scene of the offense, and the juvenile is removed to the Receiving Home when a release to parents is not arranged. Commitment to the Home is attended by none of the formal rites usually found in criminal arrests and detention. No notice of right to counsel is made; there is no available procedure for preliminary hearing before a committing magistrate; no bail is set.[13] These omissions may be ascribed to the fact that

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copies of which form a permanent part of precinct and Youth Aid Division records. No person outside of the police may have access to these records. Gen. Order No. 1, D.C. Metropolitan Police Dep't, p. 6 (Jan. 1, 1956).

[9] The police order governing commitment to the Receiving Home by Juvenile Squad officers reads in part: "Juveniles shall not be sent to the Receiving Home except as follows: (1) When they are charged with offenses which require a period of investigation; . . ." Gen. Order No. 1, Metropolitan Police Dep't, p. 6 (Jan. 1, 1956).

[10] 52 Stat. 598 (1938), D.C. Code Ann. § 11-912 (1951).

[11] 52 Stat. 600 (1938), D.C. Code Ann. § 11-915(3) (1951).

[12] Under the law of the District of Columbia, a restriction of the person's full liberty or a brief detention in custody constitutes an "arrest." Morton v. United States, 79 U.S. App. D.C. 329, 331, 147 F.2d 28, 30, cert. denied, 324 U.S. 875 (1945); Long v. Ansell, 63 App. D.C. 68, 71, 69 F.2d 386, 389, aff'd, 293 U.S. 76 (1934).

[13] The absence of a right to bail for juveniles in the District of Columbia may have been cured by Trimble v. Stone, 187 F. Supp. 483 (D.D.C. 1960), appeal docketed, No. 16037, D.C. Cir., Oct. 18, 1960.

constitutional guarantees have not unequivocally been assumed to apply to juveniles, and particularly not criminal constitutional guarantees. But compensations of a minimal nature appear to offset reduced protections for juveniles in the District of Columbia. Pursuing a discretionary policy, Youth Aid transports juveniles in unmarked squad cars, driven by plain-clothes policemen, thereby avoiding the stigma of the "paddy wagon"; in general they do not fingerprint or photograph, except where the nature of the offense is such as to indicate the probable future appearance of the offender in police hallways, in which case such records would prove helpful to law enforcement. Aside from these measures, and an admitted air of stern affability marking members of the Juvenile Squad, the juvenile finds himself deposited with no uncertainty in the Receiving Home, a detention facility which will be discussed subsequently.

The period between apprehension and commitment is ordinarily of short duration, usually not exceeding two or three hours. In instances where a search for other juveniles implicated by the one picked up causes delay, the pre-commitment detention may extend to five or six hours, but Youth Aid Division officials express a desire to avoid these cases even though the *Mallory* rule,[14] which precludes the admission of evidence obtained during periods of illegal detention, is inapplicable in subsequent Juvenile Court proceedings.[15] Abuses laid to police freedom from the Federal Rules of Criminal Procedure in the handling of juveniles[16] are not readily apparent and have obtained almost no appellate review, but conversational contacts with non-police sources disclose some skepticism as to whether certain policemen comprehend the special status of juveniles and the ostensibly rehabilitative system to which they are absorbed upon apprehension. Such doubts may or may not be justified, but in the absence of any more definitive demonstration that abuses do exist, the Youth Aid operation must generally be admired as a realistic and helpful police approach to the growing problem of juvenile delinquency. The understanding and readiness to assist existing in higher police echelons, which the Division's organization and attempted operation reflect, are most creditable and should enlist the community's attention and applause.

A police complaint and notice of commitment are filed at the Juvenile Court soon after placement of the child in the Receiving Home. If the commitment occurs during the night, filing and notice are made when the

[14] Mallory v. United States, 354 U.S. 449 (1957).

[15] See Pee v. United States, 107 U.S. App. D.C. 47, 51-52, 274 F.2d 556, 560-61 (1959).

[16] Id. at 50, 274 F.2d at 559.

court opens the following morning. With the filing, police control over the juvenile ends, and further police participation in the case will be restricted to informal consultation with court officials as to the feasibility of waiving jurisdiction to an adult court[17] or to testifying in Juvenile Court if the case is retained.[18]

However, in cases where the police apprehend a juvenile and release him to his parents, participation in the case may be only beginning. It is only at this juncture of police juvenile processing that serious question can be raised as to the legal propriety of a standard police practice—the retention of jurisdiction over minor offenses, such as initial misdemeanors, which are then disposed of by a police hearing. The Juvenile Court never obtains notice or jurisdiction in such cases and is not empowered to review the police decision since no police hearing was ever contemplated under the statute. With regard to police involvement in juvenile proceedings, the statute provides in part: "In every such case [where police apprehend a juvenile] the officer taking the child into custody shall immediately report the fact to the court and the case shall then be proceeded with as provided in this Act."[19] Elsewhere in the act, original and exclusive jurisdiction in all proceedings concerning children who have violated the law is lodged in the Juvenile Court.[20] Nevertheless, police screening procedures via closed hearings abound, and days after a juvenile has been arrested or ticketed and released he may be asked to return to the Youth Aid Division to explain his difficulty.[21]

The notice sent to the juvenile's parents announcing these hearings is carefully worded: "You are hereby requested to be present . . ."; implicit in this language is Youth Aid's awareness that a parent or child cannot legally be compelled to attend. Non-attendance elicits second and third notices from the division and occasionally a phone call. The effectiveness of these methods is demonstrated by the fact that police officers interviewed could not remember a single case in the last five

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17 52 Stat. 599 (1938), as amended, 61 Stat. 92 (1947), D.C. Code Ann. § 11-914 (1951).

18 Additionally, police officers occasionally visit the Receiving Home to question an inmate in connection with an investigation of the alleged offense.

19 52 Stat. 599 (1938), as amended, 66 Stat. 134 (1952), D.C. Code Ann. § 11-912 (Supp. VIII, 1960).

20 52 Stat. 597 (1938), as amended, 54 Stat. 735 (1940), D.C. Code Ann. § 11-907 (1951).

21 It is to be observed that on the national scale, police hearings of this nature enjoy the recommendation of both the United States Children's Bureau and the National Council of Juvenile Court Judges.

years in which parent and child did not eventually appear at headquarters.

Last year 5239 hearings were held, resulting in 1295 dismissals and 221 references to Juvenile Court. Approximately 1100 of the cases screened involved traffic violations which are considered delinquent acts in this jurisdiction.[22] The remainder usually fall within the nonserious, nonviolent misdemeanor category.

Despite their lack of statutory authority, if one observes a few of these hearings and attempts to evaluate them in light of the Juvenile Court's huge backlog of cases, their merit, not merely to the court but also to the child, becomes strikingly apparent. The hearings commenced in 1955 in response to a staggering workload then borne by the court and were expressly permitted by incumbent Judge Edith Cockrill. Her single stipulation was that no child screened should be placed under police probation; cases meriting such supervision were to be disposed of exclusively by the Juvenile Court. With a few exceptions, the police appear to have strictly observed this caveat, and those exceptions are cases in which the hearing officer acting completely unofficially has the juvenile return once or twice to report on progress. This practice is rare and always either ratified or requested by the parent, who is informed of the tenuous legal nature of the arrangement.

The hearing itself is informal and carried on in a small office off the main room of Youth Aid headquarters in the Municipal Center. The complaint filed by the arresting officer is read to the boy and his parents, and he is asked whether he committed the offense. If he denies and expresses a willingness to try the case, it is immediately referred to the court and the hearing ends. If he admits, as is the usual case, and his record is fair or excellent, he is given an old-fashioned horse-sense lecture by the officer on (1) the penalty theoretically assessable for the particular act committed; (2) the utter stupidity of a young man embroiling himself in the particular form of trouble; (3) the jeopardy in which the boy places himself by his act with regard to college entrance, employment opportunities, and a bright future generally; and (4) the enormous recidivistic rate among adults with juvenile records.[23] The hearing officers[24] are characterized by what may be best described as a verbal surefootedness and a hard-hitting if understanding style of presentation; a boy teetering on the brink of a delinquent attitude could

22 1959-60 Annual Report, Youth Aid Division, D.C. Metropolitan Police Dep't (1960).

23 Unofficial police sources estimate this rate as high as 75%.

24 Currently there are four hearing officers, all of Detective rank.

hardly fail to be healthily intimidated and impressed. Best evidence of this result emerges from the statistics; a cumulative study of the last five years indicates that more than half of the juveniles dismissed after one of these hearings never reappear before Youth Aid Division officers.[25] If a juvenile with a prior record reflects an uncooperative attitude at the hearing, the hearing officer will send the case to Juvenile Court.

Traffic violations provide the only instance in which formal restrictions on a juvenile will issue from these hearings. In such cases the police may compel attendance at Traffic School. Since the Juvenile Court also sends offenders to the Traffic School, question may be raised as to whether the concept which justifies the police hearings—that they circumvent unnecessary adjudications—is not undermined by the fact that in these cases the police are duplicating a judicial disposition. A second less questionable consequence of these hearings is reference of the child to the city-wide Commissioner's Youth Council program, where his participation is on a voluntary basis.

In summary, five characteristics mark these hearings: (1) except for the question posed by the traffic school referrals, these hearings never result in any form of punishment or treatment by the police, penal or rehabilitative dispositions being left exclusively with Juvenile Court; (2) they nearly *halve* the number of cases which would otherwise burden the court, and thus permit more time for the cases the court already has, while preventing delay and the involuntary injustice of summary treatment in the handling of those cases now kept out of the court; (3) they are preventively effective, by statistical showing; (4) but, they are of questionable legality; and (5) they are without the benefit of a social evaluation such as is introduced before the disposition of every case heard by the Juvenile Court. Inasmuch as these hearings are without statutory authorization, it may be contended that they should be eliminated. Yet their practicable elimination can only be effected if Juvenile Court judicial and administrative personnel are increased by the Congress. Since continued congressional intransigence is to be anticipated, the alleviation of the present court's burden cannot be counted upon in the foreseeable future. To observe the strict letter of the Juvenile Court Act, then, by closing off the police hearings and referring every single case to the court without benefit of the screening technique, would appear to be folly of the highest order. A doctrinaire approach to the problem of a swamped juvenile system clearly will not

[25] 1959-60 Annual Report, note 22 supra.

do. Until Congress sees fit to authorize additional manpower for the court, the solution to the legal problem posed by police hearings lies alternatively with either continuing publicly to ignore their implications, which most officials do, or with legislatively ratifying them and putting a power of review in the Juvenile Court to insure against the growth of abusive practices in the exercise of police discretion.

II

THE SOCIAL SERVICE DIVISION OF THE JUVENILE COURT

Usually within a day after police commitment to the Receiving Home and court receipt of notice of the placement through the police complaint, the court's social intake procedures begin. A social worker in the Juvenile Intake Section of the court's nonjudicial Social Service Division is assigned to the boy and visits him as swiftly as possible at the Home. The time lag between commitment and this visit may be limited to scant hours, but under current workloads a social worker may not see the child until after he has conferred with the parents who are called to the Juvenile Intake Section of the court the day after commitment. This conference is designed to acquaint the social worker with the family and with background information concerning the child. The parents are in turn fully informed of the alleged offense. In rare cases, the social worker may decide on the basis of this conference that the juvenile should be released to his home, and this request is channeled to the Director of Social Service for approval; but in most instances the narrow result of the meeting is to schedule further contacts with the parents and to provide the social worker with factual guideposts from which he can undertake a brief study of the youth.

The material accumulated in this study together with information gleaned from a maximum of three visits with the boy at the Receiving Home is reported to the Director of Social Service of the court in order to assist that official at the time he holds a preliminary hearing or, as it is called, "the Director's Conference." This hearing, at which the youth, his parents, his attorney, the social worker, and the Social Director can all theoretically be present,[26] is under current court policy to be held within five days of the court's receipt of the complaint or "as soon thereafter as scheduling permits."[27] At the present time, inmates of the Receiving Home are brought in within the stated period, but juveniles released to

[26] Policy Memorandum No. 2, D.C. Juv. Ct., p. 1 (rev. Sept. 17, 1959).
[27] Ibid.

their parents upon arrest often must wait longer for the hearing, the delay finding justification under the quoted escape clause.

When held, it is only rarely that an attorney is present. The small number of attorneys who appear—in approximately one out of every ten cases—is unsurprising since notice of the right to have counsel present at the hearing is not given beforehand, and the realization of the right is therefore left solely to the imagination and initiative of the parent. Given the indifferent attitude of many parents, the absence of counsel at the preliminary hearing is in consequence a normal occurrence. Such absence is not flatly condemnatory of the system, since the preliminary hearing is held only to determine whether a petition, analogous to an information in the criminal law, will be filed. Juvenile Court jurisdiction does not officially attach until the petition is filed and, upon filing, it binds the youth over for an appearance before the Juvenile Court bench. In no strict sense can the hearing be regarded as an adjudication of delinquent status. The Director is not a judicial officer, the hearing is not judicial in nature, nor will information offered by either probation officer, parent or juvenile be later admitted in Juvenile Court in the event the adolescent denies involvement in the act and is held over for trial. Nevertheless, presence of counsel would appear to be a desirable aspect of the proceedings; the Director can and frequently does determine not to file a petition,[28] and the presence of a persuasive advocate on behalf of a boy could well turn the hearing officer in favor of a deserved dismissal. Since internment at the Receiving Home for at least a month or more may result if a petition is filed, unless the Director is persuaded to release him in the interim to his parents, the youth should at the preliminary hearing have the benefit of all available assistance in resisting this potential deprivation of liberty. It follows that notice should be given to all parties that counsel may attend the hearing, and furthermore, in case of financial hardship, the court should appoint an attorney to serve the juvenile's cause during these pre-adjudicatory proceedings. The Director himself has classified the now sporadic appearance of counsel "constructive," with exception reserved toward those who enter the conference imagining it to be a preliminary hearing before a United States Commissioner.

At the present time, twelve conferences are held each morning at the Juvenile Court building. The purpose of the hearings as propounded

[28] The Annual Statistical Report for the Juvenile Court for fiscal 1960 indicates that 828 delinquency cases were disposed of during the year by the Director of Social Service without judicial action.

in a Juvenile Court policy memorandum[29] is to determine whether the interests of the public or of the child require that judicial action be taken in relation to children referred to the court. Under current workloads, this complex determination is given an average 15 to 20 minutes per case hearing. The following order of business, occasionally varied, normally characterizes each conference: parents, juvenile, the occasional attorney and the caseworker enter the conference room off the Juvenile Courtroom and sit opposite the Director. The complaining witness or witnesses are not present. Introductions ensue and the Director reads the complaint filed by the police against the youth. Upon completion of this reading, he informs the parties that he will decide at the conclusion of the conference whether a petition will be filed and the case thereby held over for judicial disposition. If the juvenile has been transported from the Receiving Home for the conference, the Director adds that he will reach the further determination as to whether the boy will be returned to the home or released to his parents pending the trial.[30] The youth is then asked whether he did the acts charged. If he admits, he is briskly asked why. If he denies, he is asked to explain why he thinks he was charged. Denial draws the Director's advice as to right of counsel and the availability of court-appointed attorneys if required. Any explanation to be made regarding the offense then follows, during the course of which the Director scans the juvenile's record for signs of previous difficulty with the law. When the boy finishes, usually quickly and inarticulately, the Director asks for the social worker's report from which he derives essential assistance in reaching a decision. The worker relates his knowledge of the offense, of the boy's background, habits and schooling, or as much of these as he has been able to learn from the study permitted by the limited space of time between arrest and conference. Any recommendations the social worker has are heard. The parents are then asked if they have any statement to make. Similarly, the attorney is asked to contribute as he or she wishes. Following all the statements, the Director returns his attention to the juvenile and, in the case of a confession, asks him if he understands the wrongfulness of his act, if he has learned anything from his experience since the offense, and if he thinks this sort of act might occur again. The answers elicited are obvious and vary little from case to case. By this point, the Director has reached a decision as to both petition and release, the

[29] Policy Memorandum No. 2, supra note 26, at 1.

[30] In rare instances, the decision has been made to confine a juvenile in the Receiving Home who had been in parental custody between arrest and Director's conference.

latter heavily conditioned by the nature of the offense and the juvenile's recidivistic tendencies, if any, as indicated by the record. The parties are dismissed after the Director announces his determinations.

These determinations under official court policy are alternatively to dismiss or to petition, and if to petition, then to release or to continue confinement. In practice, however, fifteen per cent of the cases encounter a third type of disposition which falls somewhere between petition and dismissal. This is the decision to defer the petition for further study.[31]

Essentially, deferment entails a stern warning to the juvenile that he must maintain good behavior throughout an informal probation period, during which he will be kept under social supervision and may be required to report to the Social Service at regular intervals. In the meantime, the petition will be held in abeyance. Failure to meet the unofficial probationary conditions will presumably result in filing, since in theory no petition is deferred unless the child has admitted the offense, thus providing sufficient legal ground to support judicial action. However, the official court memorandum[32] supporting deferment sets forth no minimal legal criteria which must be satisfied before resort to deferment procedure is permissible.

Deferment is a unilateral Social Service measure and is not reviewed by the Assistant Corporation Counsel or the judicial division of the court. The only disturbing legal aspect of this practice is that nothing but the Director's discretion currently prevents the deferment from being utilized in cases where probable cause to believe the child is guilty does not appear but where surveillance of the child is nevertheless deemed wise for various indefinable social reasons. The fact that great discretionary power is exercised with benevolence in the present does not justify that power for all future time, and it may therefore be suggested that some minimal check be installed with regard to deferment to insure that no child is ever restricted without sufficient cause.

Assuming a decision to file a petition at the close of the conference, a date is set for court appearance and the petition is drawn up and forwarded to the Assistant Corporation Counsel's office for the Juvenile Court. This office performs dual functions resembling those of an appellate court with respect to the Director's decision to file or dismiss.

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[31] See Policy Memorandum No. 2, supra note 26, at 2.

[32] Ibid. The Probation officer must have a report and recommendation ready within 90 days after conference if the child is at liberty, within 30 days if he is in the Receiving Home.

A decision either way is presumably reviewed in each case by an assistant corporation counsel. If the Director's decision to dismiss is not agreeable, the Corporation Counsel's office can file its own petition and thereby insure that the case will come before the court for judicial disposition. Conversely, the corporation counsel may veto the Director's decision to file by failing to approve the petition for legal sufficiency. The Director is without recourse in that event, and the case is dismissed. In practice, however, Assistant Corporation Counsel rarely fails to rubber-stamp the Director's decisions, which thus roll across the government desk in an unimpeded pro forma parade.

It may be valuable to observe at this point the considerable police unrest at the fact that the power over preliminary release of a committed juvenile resides in a Social Service officer and not a lawyer.[33] A common complaint is that some "fairly tough boys," guilty of fairly violent offenses, are all too often dismissed to their parents because the individual determining such release is not trained to comprehend the legal gravity of the juvenile's act. Rather in making his decision, the Director relies on such criteria as the juvenile's past record, the impression he and his parents create at the conference, and the social worker's report on the home and school situations. The alternative to the present method would be to put the power of decision in Assistant Corporation Counsel or some judicial officer, such as a master, with the Social Service officers acting objectively in advisory capacities. At the very least, Assistant Corporation Counsel should give greater attention than has been given to the results of these Director conferences, in terms of both the petition's legal sufficiency and the danger to the community if an adolescent is released pending trial.

A final question exists in some quarters as to whether there is statutory authority to justify the action taken at the Director's conference of confining or reconfining the child in the Receiving Home. The Juvenile Court Act provides that no child "shall be held in such place of detention for any period longer than five days, excluding Sundays and holidays, *unless the judge shall order* such child detained for a further period."[34] Since the Director in effect now makes this order, the question becomes whether the power is properly delegated to him. As the Di-

[33] The criticism is inapplicable to the present incumbent of the Directorship, who has a law degree in addition to sociological training. But no rule or policy currently prevailing insures that a lawyer will always hold the position.

[34] 66 Stat. 134 (1952), D.C. Code Ann. § 11-912 (Supp. VIII, 1960), amending 52 Stat. 598 (1938). (Emphasis added.)

rector sits in a theoretically civil capacity, under the administrative direction of the judge,[35] and is authorized to have charge of all social work of the court,[36] the decision to confine seems properly left in his hands, for it is reached largely on the grounds of the welfare of the child or of the community, both of which evaluations may be considered "social" in nature without snapping the thread of definition.

At the close of the hearing, the juvenile is returned to the Receiving Home where he may wait as long as two months for his appearance before the bench in Juvenile Court. The delay is occasioned by the huge backlog of cases presently burdening the court,[37] the alleviation of which unquestionably lies in congressionally authorized additions to the court's judicial and administrative personnel. Since the Receiving Home must serve as a place of lengthy confinement for juveniles, where they are separated, for better or for worse, from freedom and conventional surroundings, that institution's operation will bear brief review below.

To be noted also is the post-conference assignment to the juvenile of a probation officer (a social worker) who in the period between the Director's conference and the court appearance will attempt to gather sufficient information concerning the child in order to present a useful recommendation to the judge once that official has determined the juvenile's status upon the arraignment or the trial.

There are presently fourteen social workers in the court's Probation Section, which is distinct from the Juvenile Intake Section although under the same general direction of the head of the Social Service Division. A reorganization plan currently underway contemplates the addition of one more probation officer to the staff. Each officer has approximately 90 juveniles, almost evenly divided between pre-adjudication and post-adjudication probation cases, for which he or she is responsible. One official noted that ideally this load would be closer to 50 cases. But analysis of the simple factor of time available suggests that even 50 cases are too many. The social worker is presumed to see as much of probationers as of juveniles undergoing the social study before adjudication; he is expected to evaluate the home, the financial, educational and cultural circumstances of family life, the schooling, habits and outside interests of the juvenile, the interaction characterizing the parent-child relationship, and a myriad of other factors entering a proper social

35 52 Stat. 602 (1938), D.C. Code Ann. § 11-923 (1951).

36 Ibid.

37 Compilation for the third quarter of 1960 indicated a backlog of approximately 1900 cases, including both adults and juveniles.

study; to these ends, he is expected to meet regularly with the child, ideally once a week, and even more frequently with the parents, and to have contact with school or employers. After the average eight-week period between petition and disposition—often less in cases where the juvenile is in the Receiving Home, more when the child is in parental custody—has passed, he is expected to present a carefully conceived evaluation and recommendation on the case by way of assisting the Juvenile Court judge in the latter's attempt to dispose equitably of the juvenile before him. The absurdity of this expectation emerges upon brief reflection; assuming a five-day, forty-hour week for the probation officer, and further assuming the two-month prolongation between petition and courtroom proceeding, the officer with not 90, but only 80 cases can devote precisely 30 minutes a week to each, or 4 irregular hours over the entire pre-adjudicatory period. Assuming the theoretically ideal burden of 50 cases per probation officer, approximately 48 minutes a week or 6½ hours over the period is available for each case. These figures discount, of course, time spent composing written reports, attending staff meetings, appearing in courtroom proceedings, and traveling to and from the necessary sources of social information. The consequences are obvious: the officer rarely has a satisfactory contact with the child or the parents, discharges many of his duties by telephone, suffers the frustration of watching his training spread thinly and uselessly over a tragically wide problem area, and ends up penning an admittedly superficial evaluation on which the judge then relies in determining the future course for the juvenile. Both the Commissioners for the District of Columbia and Congress' self-appointed authorities on juvenile treatment, who presently stall the authorization of additional court personnel, might well take notice of the waste.

III

THE RECEIVING HOME FOR CHILDREN

The present Home was opened as a detention center in 1949 with a capacity for 40 inmates. Rampant overcrowding over the following eight-year period precipitated an expansion of facilities to accommodate 90 in 1957. In only two years in its entire eleven-year history has the Home housed on an average less than or exactly at capacity. One consequence has been that, during peak periods, the beds run out and inmates sleep on mattresses on the floor. One official of the Home has noted, in regard to overcrowding, that while occasionally bedding and clothing supplies are depleted, there remains the assurance that sufficient

food will always be available. The Home is not governed by the Juvenile Court, but by the Department of Public Welfare, and the wide discretionary policies of Home treatment and care permitted the Department are not reviewable by the court. While not obviously unfortunate, this split of command over persons theoretically subject to the same rehabilitative system does not lend itself to the unity of treatment or control which should be ideally sought in working with children over a period of sensitive months or years. Whatever danger inheres in this split is exacerbated by the additional fragmenting which characterizes later handling of a juvenile in the case where he is committed to the National Training School for Boys, which is directed by the Federal Bureau of Prisons, and where he is technically in the custody of the Attorney General of the United States. That officer, as will be discussed, possesses statutory power to commit the boy to a federal prison for adult criminals.

When a juvenile suspected of delinquency is committed to the Home, usually by Youth Aid Division police officers, a brief history is taken, he is immediately showered, dressed in khaki and sweat shirt, and undergoes a medical examination before being placed in one of the Home living units. The units or groups of inmates into which newcomers are placed are determined roughly by age. Temperament is advertised as a second determining factor, but the brief amount of time spent analyzing the child before he is integrated into a group belies the idea.

Department of Public Welfare personnel handle these groups individually in various work, physical training, schooling, and counseling activities. Although the Receiving Home is a detention center and not a corrective agency or training school, Home officials term these programs rehabilitative and all inmates participate in them. Strictly speaking, the operations of the Home in this respect involve a presumption of guilt; inmates undergo a rehabilitation process before any showing that rehabilitation is required; a juvenile is cured before proof is entered that he is wayward.

Doubtless the operation of a detention center on a rehabilitative principle could be justified by a showing that these operations entailed only healthy, time-consuming work, obviously good for any child, and did not in the least partake of the punitive or criminal aura. That such a refreshing state of affairs exists is not at all clear. Perhaps most damaging to the image of cheering rehabilitative work at the Home is the questionable practice of punishing uncooperative or otherwise difficult detainees by ushering them into solitary confinement for periods ranging from twenty-four hours upward. A visit to the Home disclosed

that solitary cells are without bedding; a blanket suffices as both mattress and cover for the inmate sleeping on a concrete floor. Inmates report minimal internments in solitary as of four- and five-day duration, which is sharply at odds with the statements of Home officials. Although much of what an inmate of any institution reports as abuse may be discounted as an unjustified expression of aggravated concern for personal plight, the idea of even a 48-hour bedless confinement in solitary at a pre-adjudicatory detention and "rehabilitation" center may well deserve review. It is to be observed that solitary confinement, although frequently invoked by Home personnel for punitive purposes, finds no mention in the Annual Report of that institution's operations. Undoubtedly, separating particularly obstructive or anti-social individuals from the group for the benefit of the cooperative majority is a sound and meritorious measure; but at a detention center holding unjudged juvenile suspects and professing an orientation towards a rehabilitative end, it should not be a punitive measure.

The Home is heavily secured, and occasional runaways have compelled the innovation of prison locks on main doors, collared locks on inner passageways. The constant necessity for a counselor with a key, if one is to travel any distance, may contribute to the feeling among some of the more sophisticated juveniles, as one Home official stated, that they are undergoing a criminal process. Of the few inmates recently interviewed, including females, most considered their detention punishment and were free with their use of the word "jail," an institution expressly precluded from use for the detention of juveniles[38] in the District of Columbia. If it is fair to say that the nature of a system is partly determined by the psychological reaction of the individuals subjected to it, the Home may therefore be more a jail than a juvenile detention center. But reality commands the quickly added remark that, given the escape wish in juveniles as well as in adults, perhaps a jail it must be.

The Trimble[39] *Decision.* Until recently, there appeared to be no method of being released from the Receiving Home without the approval of the Juvenile Court. But in September 1960, Judge Holtzoff of the United States District Court for the District of Columbia in a habeas corpus proceeding admitted to bail a fifteen-year old inmate of the Receiving Home who had been incarcerated there pending a trial in the

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[38] 52 Stat. 602 (1938), D.C. Code Ann. § 11-927 (1951).

[39] Trimble v. Stone, 187 F. Supp. 483 (D.D.C. 1960), appeal docketed, No. 16037, D.C. Cir., Oct. 18, 1960.

Juvenile Court for assault.[40] The decision was the first in this jurisdiction to recognize the eighth-amendment right to bail as obtaining for a juvenile.[41] In casting aside considerations of the civil nature of juvenile proceedings and the Juvenile Court Act's silence as to bail, the court determined that the only test as to the applicability of constitutional guarantees was one of physical freedom: "If as a result of an infraction of law, the proceedings may result in depriving a person of liberty, the protection of the Bill of Rights is applicable."[42] Since the petitioner faced detention of up to several months in the Receiving Home pending trial,[43] and the risk thereafter of an indeterminate commitment to the National Training School for Boys or a federal reformatory,[44] the court found that the right to bail applied.

The decision evokes not only the familiar discussion as to the status of juveniles vis-à-vis Bill of Rights guarantees,[45] but expressly notes the important argument against the unrestricted application of those rights.

> The Court recognizes that it may be desirable in the interest of the public, or even in the interest of the individual, in some instances to confine the accused while awaiting final disposition of his case, instead of permitting him to be liberated on bail. . . . [But] it is far more important to preserve the basic safeguards of the Bill of Rights, which were developed as a result of centuries of experience, than it is to sacrifice any one of them in order to achieve a desirable result in an individual case, no matter how beneficial it may seem to be for the moment.[46]

The persuasion in this sweeping constitutional argument must be accepted as irresistible, but it does not solve all the problems which are posed by the uniquely incapable status of minors. If all children today in the Receiving Home have a constitutional right to bail, many may be sent home to the most sordid and dangerous situations the community has to offer. By this is not meant merely colder meals, less care and more dirt in the home, as one concerned Juvenile Court official pointed out, but in numerous known cases, to incestuous relations, extreme alcoholism, and other equally primitive conditions. Unlike the adult

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40 Ibid.

41 Former Judge Cockrill regularly set bail, but Judge Ketcham terminated this practice.

42 187 F. Supp. at 486.

43 Id. at 484.

44 18 U.S.C. § 4082 (1958).

45 See, e.g., Powell, Constitutional Safeguards in Juvenile Courts, 35 Notre Dame Law. 220 (1960); Comment, Constitutional Rights and the Juvenile Court—The Need for National Unity and Federal Intervention, 5 Vill. L. Rev. 107 (1959).

46 187 F. Supp. at 488.

freed on bail, where the risk lies wholly on society, a child liberated poses the greater risk to his own welfare; only secondarily is the risk to the community of significance. The child is, in the realistic view of the law, frequently incapable of adequately protecting himself. It follows, therefore, that while under a constitutional system every individual charged with an offense must have a right to bail, to leave the matter there in the case of a juvenile is not enough. The additional power must be put in the Juvenile Court to assume jurisdiction to commit the child, on the basis of dependency, not delinquency, if it appears upon sufficient investigation that exposure to his home life will be debilitating. One may term this dependency jurisdiction a device subject to abuse, but clearly the constitutional assurance of liberty may be justifiably diminished when liberty itself is a greater evil than confinement.

Two practical problems immediately mark the innovation of juvenile bail and a dependency jurisdiction alternative to the jurisdiction over delinquency. As to bail, no machinery currently exists for the swift presentation of a juvenile before a United States Commissioner where bail could be set. But correctional legislation may supply the answer to this difficulty. An appearance before a United States Commissioner need not lead to incarceration in the D.C. Jail; the Receiving Home, where at the very least the juvenile is kept separate from adult criminals, would remain the designated place of commitment, the difference after legislation being that the power to commit is in a judicial officer, not a policeman. It is difficult to discern the greater rehabilitive good accruing to a juvenile when the policeman has that power, as he now does. Once the commitment is accomplished and the complaint is received by the Juvenile Court, the social worker assigned by the court could commence the standard investigation, adding a special inquiry as to home conditions in view of the possibility that the court may have to assume dependency jurisdiction if bail is forthcoming. This possibility introduces the second problem. Clearly the idea of a dependency jurisdiction to counter bail involves enormously increased paperwork and responsibility for the court's social and administrative personnel, and will require that the judge spend additional time—a precious commodity in this system—on cases which under present arrangements do not require that attention. But this argument ultimately leads the listener back to Capitol Hill, for it is there, in the District Committee possessing the power to recommend legislation which would authorize the additional staff so critically needed by the court, that the solution to most juvenile-system problems resides.

IV

WAIVER OF JURISDICTION

Under the Juvenile Court Act, the judge of the Juvenile Court may waive jurisdiction to the United States district court[47] in cases where a juvenile between the ages of 16 and 18 has committed an act which would have been a felony if perpetrated by an adult, or where a juvenile of any age has committed an act which if committed by an adult would be punishable by death or life imprisonment.[48] While the decision to waive is embodied in an order which can be signed only by the Juvenile Court judge, numerous opinions are voiced one way or the other during Social Intake proceedings, and the judge heavily relies on these in reaching his determination. Normally in the case of a crime falling within the statutory categories, the Youth Aid Division will attach to its complaint filed at the court a recommendation that jurisdiction be waived to the District Court for the District of Columbia. The Chief of the Intake Section, acting in conjunction with the probation or social worker assigned to the juvenile, similarly forms an opinion as to waiver which is forwarded with the police recommendation to the Director of Social Service. Conferences between the Director, other Social Service officials, and the police may follow. In instances where doubt exists as to the legal sufficiency of the complaint, insofar as it must be passed on by a grand jury in the district court, Juvenile Court legal assistants will consult with the United States Attorney. The Director of Social Service for the Juvenile Court may or may not determine the utility of waiver before a conference with the suspect. Conferences are usually not held. But it is reasonable to observe that in instances where a conference is held with waiver in issue, the presence of an attorney could be potentially of great service to the juvenile, considering the gravity of the consequences which may attend a waiver and subsequent trial in an adult court. Such instances would therefore seem to strengthen the argument favoring notice to the juvenile of right to counsel immediately after his apprehension, instead of a continuation of the current practice of notice only when the juvenile denies involvement at the Director's conference.

Both Director's and judge's final opinion as to waiver are conditioned

[47] Nothing in the act militates against waiver to the Municipal Court for the District of Columbia, but the district court is always selected.

[48] 52 Stat. 599 (1938), as amended, 61 Stat. 92 (1947), D.C. Code Ann. § 11-914 (1951); Briggs v. United States, 96 U.S. App. D.C. 392, 226 F.2d 350 (1955).

by criteria set forth in a Juvenile Court policy memorandum.[49] These include considerations such as the nature of the crime, the manner in which it was committed, its prosecutive merit before a grand jury, the maturity of the suspect and the age of his companions in the offense, his record, and his susceptibility to rehabilitation. Once the judge signs the waiver order, Youth Aid police officers proceed to the Receiving Home where the child is collected and taken forthwith to a magistrate for a preliminary hearing. The juvenile, suddenly an adult confronted by the criminal law, is then committed to the D.C. Jail pending arraignment and trial. All guarantees and protections of the Constitution and the Federal Rules of Criminal Procedure immediately and unequivocally obtain.[50]

Presentment before a grand jury is the first government step to follow the preliminary hearing before a United States Commissioner.[51] At this point, a curious situation has occasionally occurred in the past. If the grand jury fails to return an indictment for a felony, the case may be sent to the Municipal Court for trial as a misdemeanor. But since the Municipal Court has persistently denied its jurisdiction to try a juvenile for an offense of less stature than a felony, the suspect is therefore set free. No formal opinions appear in explanation of the Municipal Court's refusal to try, but several explanations may be hazarded. First, the Juvenile Court Act grants original and exclusive jurisdiction over pre-18-year-old juvenile offenses to the Juvenile Court.[52] Other District courts, including the Municipal Court, can receive juvenile cases only in the event of a felony or capital crime since these provide the only instances when the Juvenile Court may waive.[53] If the district court grand jury in effect reduces the charge to a misdemeanor by failing to bring in a felony indictment, the calibre of the crime topples into the category of offenses which are delivered exclusively into the jurisdiction of the Juvenile Court by the statute, and as to which that court has no discretion to waive. The Municipal Court may therefore logically believe it is precluded from assuming jurisdiction. On the other hand, the argument may be advanced that since the Juvenile Court has waived jurisdiction, the child has assumed an adult criminal status and may

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49 Policy Memorandum No. 7, D.C. Juv. Ct. (rev. Nov. 30, 1959).

50 Pee v. United States, 107 U.S. App. D.C. 47, 51, 274 F.2d 556, 560 (1959).

51 Id. at 50-51, 274 F.2d at 559-60. In fiscal 1959-1960, 77 indictments were returned in the 89 cases waived by the Juvenile Court. 1959-60 Annual Report, note 22 supra.

52 52 Stat. 597 (1938), D.C. Code Ann. § 11-907 (1951).

53 52 Stat. 599 (1938), as amended, 61 Stat. 92 (1947), D.C. Code Ann. § 11-914 (1951); United States v. Anonymous, 176 F. Supp. 325 (D.D.C. 1959).

thereafter be tried for any degree of criminality provable from the particular transaction out of which the case originally arose. Although the idea has never been formally stated, the district court appears to believe it could try a juvenile for a misdemeanor if it so chose, but does not do so only because of a policy against trying any misdemeanors whatever, regardless of the defendant's age. In a distinguishable situation, the district court has never had difficulty accepting a guilty plea for a lesser included offense from a juvenile over whom jurisdiction was waived and against whom the grand jury had returned a felony indictment.

When the Municipal Court refuses to hear a misdemeanor charge, a hiatus results because the Juvenile Court in such cases is not recorded as ever having resumed the jurisdiction it had earlier waived, and consequently the suspect returns unblemished to the community. Doubt exists in the present Juvenile Court as to whether such a resumption of jurisdiction would be legal. Under the former direction of Judge Edith Cockrill, jurisdiction was never assumed anew, even for offenses committed by juveniles subsequent to the offense waived. However, the current judicial incumbent in Juvenile Court explicitly waives only as to the single felony or capital crime and believes the court maintains jurisdiction for offenses subsequent to that one precipitating the waiver.

Once an indictment is obtained by the United States Attorney, the juvenile defendant is arraigned and tried. Discretion exists in the district court, however, to try the defendant as a juvenile.[54] But to do so would seemingly require a dismissal of the indictment, the filing of a petition duplicating that which would be used in a normal Juvenile Court adjudication,[55] and the withdrawal of the prosecuting services of the United States Attorney in favor of a substitution of the Corporation Counsel for the District of Columbia. Confronted by this procedural maze, the district court has refused in all but one case to sit in a juvenile capacity since early 1960.[56] A further factor militating against district court utilization of the juvenile proceeding may be the unfortunate effect it would have of reversing the Juvenile Court decision to waive.

The Juvenile Court Act provides that a child's social and delinquency record is available to any court before which the child may appear,[57]

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[54] See Pee v. United States, 107 U.S. App. D.C. 47, 51, 274 F.2d 556, 560 (1959).

[55] Ibid.

[56] Washington Post, Nov. 29, 1960, § B, p. 1, col. 6. The case is not reported.

[57] 66 Stat. 134 (1952), D.C. Code Ann. § 11-929(b) (Supp. VIII, 1960), amending 52 Stat. 603 (1938). Although the "shall make available" language of this provision appears

which of course includes the District Court of the District of Columbia in waiver cases. But the Juvenile Court judge's discretion to deny access to such records to "other interested persons, institutions and agencies"[58] has seemingly been limited by a recent district court order which called for such records to be made available to defense attorneys appointed in a case waived to district court, in order to assist those officers in preparing for the adult trial.[59] Whether the district court can or will use the subpoena power to make these confidential records further available to other parties whose interests are not clearly accommodated by the Juvenile Court Act remains an open question.[60]

The ordinary criminal trial of the juvenile, then, normally ensues and is characterized by all the conventional criminal protections accorded an accused adult.[61] The Federal Rules of Criminal Procedure doubtless apply,[62] as does the *Mallory* rule[63] which precludes the admission at trial of statements received by police during a period of illegal pre-trial detention. Exactly what period of detention will be examined to determine the applicability of *Mallory* has yet to be determined, but presumably it will be that time between the juvenile's original apprehension and the filing of a complaint by the police with the Juvenile Court. Conceivably the commitment to the Receiving Home, which is frequently previous to filing the complaint, as in cases of a midnight apprehension, will mark the terminal point of the examinable period. Yet a third possibility exists with the period from apprehension until post-waiver presentation before a United States Commissioner, since it is a common police practice to

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mandatory, the view of current Juvenile Court personnel is that the availability of records is a matter of discretion for the Juvenile Court judge. His practice now is to make such records available in three contingencies: (1) when a defendant over whom Juvenile Court has waived jurisdiction seeks to persuade the district court to conduct a juvenile proceeding instead of a criminal trial; (2) when a defendant over whom jurisdiction has been waived to the district court seeks to launch a legal attack on the Juvenile Court judge's discretion in waiving the case; (3) when the district court needs such record for pre-sentence investigation in waiver cases.

[58] 66 Stat. 134 (1952), D.C. Code Ann. § 11-929(a) (Supp. VIII, 1960), amending 52 Stat. 603 (1938).

[59] United States v. Armstead, Crim. No. 898-60, D.D.C., Nov. 21, 1960. For newspaper account see Washington Post, Nov. 29, 1960, § B, p. 1, col. 6.

[60] Judge Orman W. Ketcham doubts the legal support obtaining for such district court orders and has expressed a desire for appellate court review. Washington Post, Nov. 29, 1960, § B, p. 1, col. 6.

[61] Pee v. United States, 107 U.S. App. D.C. 47, 51, 274 F.2d 556, 560 (1959).

[62] Ibid.

[63] Id. at 52, 274 F.2d at 561.

visit the Receiving Home for additional investigation following commitment. These visits presently occur at a rate of two to three a week for all cases combined. Since these few visits cannot be in connection with all the cases pending, the period between apprehension and post-waiver presentation before the Commissioner may be used for purposes of the *Mallory* rule only as to those cases where post-commitment visits have been made. In this respect, the rule, as in adult cases, will have flexible application, unrestricted to a definite time period.

If a conviction is obtained upon the trial, the sentence will involve a typical adult criminal penalty, and the juvenile can be committed to an adult federal prison or reformatory. He irrevocably obtains a criminal record, and it is doubtful whether he will ever return to the quasi-benevolent fold of the juvenile system.

V

THE JUVENILE IN COURT

No physical difference between the Juvenile Court and an adult civil or criminal court is perceptible when one enters a delinquency proceeding; bailiffs, U.S. marshals, clerks, court stenographers, and a judge on an elevated dais are all present. There is the difference, however, that when the juvenile appears before the bench, he or she is accompanied by parent or guardian, the assigned social worker, and in those cases where a trial is to ensue, by a representative of Assistant Corporation Counsel,[64] who in effect assumes the role of prosecutor.

The great distinction appearing between juvenile and adult criminal proceedings lies in the area of constitutional guarantees. Since the juvenile proceeding is characterized as civil, Bill of Rights guarantees which belong to one accused of crime are inapplicable in Juvenile Court adjudications. More specifically, the following rights are not constitutionally guaranteed in these proceedings: (1) the right to counsel;[65] (2) the right to public trial;[66] (3) the right to trial by jury;[67] (4) the

[64] 52 Stat. 603 (1938), D.C. Code Ann. § 11-932 (1951).

[65] U.S. Const. amend. VI; e.g., Shioutakon v. United States, 98 U.S. App. D.C. 371, 236 F.2d 666, 60 A.L.R.2d 686 (1956).

[66] U.S. Const. amend. VI. The Juvenile Court Act specifically denies this right. 52 Stat. 599 (1938), as amended, 66 Stat. 134 (1952), D.C. Code Ann. § 11-915 (Supp. VIII, 1960).

[67] U.S. Const. amend. VI. But the Juvenile Court Act grants a statutory right to jury trial. 52 Stat. 599 (1938), as amended, 66 Stat. 134 (1952), D.C. Code Ann. § 11-915 (Supp. VIII, 1960).

necessity for grand jury indictment where the juvenile is held for a capital or otherwise infamous crime;[68] (5) the right to a speedy trial;[69] (6) the protection from being compelled to give self-incriminating evidence;[70] (7) the protection against being placed in jeopardy twice for the same offense;[71] (8) the right to bail;[72] and (9) the right to be confronted by one's accusers.[73]

In practice, rights essentially analogous to a few of the above are made applicable by the statute or by judicial interpretation of due process. Thus where legislative fiat has included such guarantees in the statute or where they fall within the meaning of due process,[74] the juvenile will be assured at least of the most basic of these rights; but even here assurance lasts only as long as the legislative will remains unchanged or the judiciary continues to recognize a right as essential to a concept of fair play.

Although the act nowhere expressly provides for the right to counsel, *Shioutakon v. United States*[75] held that the Juvenile Court judge must advise the child of that right and, in the case of an indigent respondent, must appoint counsel if demand is made. However, *Shioutakon* rejected the contention that the right to counsel was basically a constitutional one, predicating this determination on the rationale that the right is only applicable in a criminal case which a juvenile proceeding is not. Recognizing the necessity for counsel but classifying juvenile cases as civil rather

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[68] U.S. Const. amend. V; cf. Ex parte Januszewski, 196 Fed. 123 (S.D. Ohio 1911); State v. Goldberg, 124 N.J.L. 272, 11 A.2d 299 (Sup. Ct. 1940).

[69] U.S. Const. amend. VI; cf. Hampton v. Stevenson, 210 Ga. 87, 78 S.E.2d 33 (1953).

[70] U.S. Const. amend. V; cf. In re Dargo, 81 Cal. App. 2d 205, 183 P.2d 282 (Dist. Ct. App. 1947); People v. Lewis, 260 N.Y. 171, 183 N.E. 353, 260 N.Y. Supp. 171 (app.) (1932). Contra, Dendy v. Wilson, 142 Tex. 460, 179 S.W.2d 269, 151 A.L.R. 1217 (1944); Annot. 43 A.L.R.2d 1128 (1955).

[71] U.S. Const. amend. V. Since juvenile proceedings are said to be civil, the Government may appeal an adverse decision. 56 Stat. 195 (1942), D.C. Code Ann. § 11-772(a) (1951); cf. In re McDonald, 153 A.2d 651 (Munic. Ct. App. D.C. 1959). Contra, United States v. Dickerson, 168 F. Supp. 899 (D.D.C. 1958), rev'd on other grounds, 106 App. D.C. 221, 271 F.2d 487 (1959).

[72] U.S. Const. amend. VIII; cf. In re Magnuson, 110 Cal. App. 2d 73, 242 P.2d 362 (Dist. Ct. App. 1952); Ex parte Espinosa, 144 Tex. 121, 188 S.W.2d 576 (1945). Contra, Trimble v. Stone, 187 F. Supp. 483 (D.D.C. 1960), appeal docketed, No. 16037, D.C. Cir., Oct. 18, 1960; Annot. 160 A.L.R. 287 (1945).

[73] U.S. Const. amend. VI; cf. In re Holmes, 379 Pa. 599, 109 A.2d 523 (1954); Annot. 43 A.L.R.2d 1128 (1955).

[74] Palko v. Connecticut, 302 U.S. 319 (1937).

[75] 98 U.S. App. D.C. 371, 236 F.2d 666, 60 A.L.R.2d 686 (1956).

than criminal forced the court to interpret the statute broadly. Since the statute grants the juvenile offender other rights which he could not intelligently exercise without the effective aid of counsel, it was reasoned that Congress must have intended that the juvenile offender should have the right to counsel as well.[76] Furthermore, since any waiver of this right must be an intelligent one, it would seem that merely showing the defendant was informed of and understood that he had the right to counsel is not sufficient.[77]

Since the *Shioutakon* case established only a statutory right to counsel, it followed that the right's retroactive application would not be granted. *Swann v. District of Columbia*[78] illustrated this problem in a habeas corpus proceeding. Petitioner, a fifteen-year-old boy at the time of his trial, was accused and convicted of "mugging" and committed to the National Training School for Boys. Swann contended that as he had not been advised of his right to counsel and did not have counsel during the proceedings, due process had been denied. The court reaffirmed the *Shioutakon* position that juveniles in delinquency proceedings are not entitled to counsel as a matter of constitutional right, not even as a matter of due process. Swann had been tried before the court of appeals in the *Shioutakon* case found the right to counsel within the statute, and retroactive application of the statute was therefore denied.

The conceptual basis of these decisions—that juvenile proceedings are civil in nature—is still subject to the valid criticism leveled by a pre-*Shioutakon* case in the district court. In *In re Poff*,[79] where the right to counsel in juvenile proceedings was founded on due process, the court stated:

> [B]y some sort of rationalization, under the guise of protective measures, we have reached a point where rights once held by a juvenile are no longer his. Have we now progressed to a point where a child may be incarcerated and deprived of his liberty during his minority by calling that which is a crime by some other name? If so, at what age is the Congress limited to legislate on behalf of the juvenile? May a child be deprived of his liberty and incarcerated in an institution until he reaches the age of twenty-one years merely by changing the name of the offense from unauthorized use of a motor vehicle to juvenile de-

[76] Id. at 374, 236 F.2d at 669. However, the right to counsel does not apply in parental-neglect proceedings. See In re Custody of Minor, 102 U.S. App. D.C. 94, 250 F.2d 419 (1957).

[77] Williams v. Huff, 79 U.S. App. D.C. 31, 142 F.2d 91 (1944). (The district court proceeding was against a juvenile for assault with a dangerous weapon.)

[78] 152 A.2d 200 (Munic. Ct. App. D.C. 1959). See Matter of Schaeffer, 126 A.2d 870 (Munic. Ct. App. D.C. 1956).

[79] 135 F. Supp. 224 (D.D.C. 1955).

> linquency? In other words, has the Congress wiped out the constitutional protection by changing a name, the substance remaining the same? This court stands steadfast in the belief that the Federal Constitution, insofar as it is applicable, "cannot be nullified by a mere nomenclature, the evil of the thing remaining the same."[80]

Nevertheless, the law today in the District of Columbia is that a juvenile is entitled to effective counsel by the statute but not by virtue of the sixth amendment or the fifth-amendment due process clause. Consequently if Congress chooses, it may expressly abrogate the juvenile's right.

To anyone familiar with the Juvenile Court Act, a courtroom barren of the public will come as no surprise. The act provides: "In the hearing of any case, the general public shall be excluded and only such persons as have a direct interest in the case and their representatives . . . admitted."[81] In practice, however, the present judge of the Juvenile Court conducts both hearings and trials in substantial conformity with the right of a public trial. Persons having a legitimate interest in the case are admitted, curiosity seekers excluded. Attorneys, law students, persons engaged in juvenile work, the press, and others who fall into similar categories are welcomed to the court, if they agree to keep juvenile identities secret. However, in the absence of any constitutional right and in the presence of a narrow statutory right to a semipublic trial, the possibility still exists that the legitimately interested public might just as freely be excluded. In view of the latent dangers of secret trials,[82] it is submitted that the right to a public trial should be acknowledged as constitutionally guaranteed, yet in a manner that need not impair the protective philosophy of the act. Since the right belongs to the person being tried, it could be recognized, with provision made for waiver in the absence of a timely demand. Such recognition would yield protection to a basic right of the child while giving effect to at least one obvious purpose of the act—the safeguarding of juveniles from the notoriety attending public trial and commitment.

The jury box is normally vacant, in this instance owing again to the clear language of the act: "The court shall hear and determine all cases of children without a jury unless a jury be demanded by the child, his

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[80] Id. at 226.

[81] 66 Stat. 134 (1952), D.C. Code Ann. § 11-915 (Supp. VIII, 1960), amending 52 Stat. 599 (1938).

[82] See generally Heller, The Sixth Amendment to the Constitution of the United States 61-63 (1951).

parent, or guardian or the court."[83] Several reasons may be attributed to the large number of cases (82.7% in fiscal 1959)[84] in which a jury is waived. First, waiver results if a demand is not made within five days after the initial hearing or arraignment before the judge.[85] If the parents and child waive the right to counsel, they generally remain unapprised of the right to a jury, since they are usually not informed of it by the court. Even where the parties know a jury may be obtained, the right would be little enjoyed without counsel since a juvenile cannot be expected to pursue his case before a jury without legal assistance. Even with counsel, discretion would still appear to dictate waiver, for with the relaxed rules of evidence employed in juvenile trials, the harm to be feared from a jury's inability to sift reliable from unreliable evidence would probably surpass the risks involved when the judge alone acts as the finder of fact. A third factor which can influence the decision to waive is the prolongation of detention in the Receiving Home, since jury trials are held but once a month for juveniles. Thus the statutory "grant" of a right to jury trial appears to be somewhat shallow. Two curative methods may be suggested: first, inform the parties at the Director's conference, or sooner, of the availability of a jury; secondly, require express waiver rather than the waiver by inaction currently prevailing.[86]

In lieu of any necessity for a grand jury indictment, a delinquency proceeding is held on the previously mentioned petition.[87] The petition is drafted in the office of the Director of Social Service and almost automatically found legally sufficient by an assistant corporation counsel.[88] Thus, sufficient cause for formal judicial proceedings against the child is found by an administrative officer, not by presentment before a grand jury. The civil character of the proceedings again justifies this

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[83] 52 Stat. 599 (1938), as amended, 66 Stat. 134 (1952), D.C. Code Ann. § 11-915 (Supp. VIII, 1960).

[84] D.C. Juv. Ct. Ann. Statistical Rep., Table 21 (1959).

[85] D.C. Juv. Ct. R. 12(A), (B) (rev. Nov. 1, 1960).

[86] See generally Heller, op. cit. supra note 82, at 1-34.

[87] "Petition: A pleading, based on a complaint . . . alleging that a respondent is within the Court's jurisdiction." D.C. Juv. Ct. R., Definition 10 (rev. Nov. 1, 1960).

[88] 52 Stat. 597 (1938), D.C. Code Ann. § 11-908 (1951). See Hearings on S. 1456 Before the Committee on the District of Columbia, 86th Cong., 1st Sess. 88 (1959). "Some time we talk to the police officer making the arrest if the information on the sheet itself is not sufficient. Nine out of ten times the statement of the police officer is sufficient to make out the prima facie case or not." (Statement of an assistant corporation counsel for the District of Columbia).

absence of a normal criminal procedure.[89] But the confusion of what should be done *after* the child is adjudged delinquent with *how* he is to be so judged seems questionable. Fairness does not require the insertion of grand jury proceedings into the Juvenile Court system, but in view of the long periods of detention, together with the absence of conventional procedures for the determination of sufficient cause, additional procedural safeguards may be reasonably suggested.

The atmosphere at trial is one of dignified informality, as provided for by the statute.[90] But it is here that the increase of juvenile delinquency with its resulting burden upon the court and its agencies becomes tragically apparent. Because of the long delay before the juvenile is tried, Corporation Counsel representatives, who originally had little time to familiarize themselves with the case, are even less familiar with it by the time it is presented for trial. If the witnesses can be found and are still living in the District, they tend to forget events with the passage of time. Perhaps even more important from the psychological viewpoint, the child is often forgetful of the events which have led him to court, thereby severely hampering any curative effect a court appearance or commitment may have upon him. The clog of cases in Juvenile Court continues to accumulate, aggravating an already difficult situation. As of June 30, 1959, there was a backlog of 235 juvenile cases requiring judicial action and 511 cases involving adults.[91] The backlog as of June 30, 1960, stood at 502 juvenile cases and 1,165 adult.[92] An unofficial source estimates that as of December 1, 1960, the total backlog is "about 2,000." These figures go far in explaining the overcrowding and length of stay at the Receiving Home,[93] the brevity of court hearings, the disappearance of witnesses, the forgetfulness of witnesses who do appear, the dismissal of cases for lack of evidence, the necessity for extra-judicial and extra-legal police and administrative measures to mitigate the onslaught, and the frustration of the individualized form of attention sought under the act. Undue delay, in itself, may cultivate a delinquent disposition in that it breeds disrespect for the law, if not outright antipathy toward it.

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89 E.g., Ex parte Januszewski, 196 Fed. 123 (S.D. Ohio 1911).

90 52 Stat. 599 (1938), as amended, 66 Stat. 134 (1952), D.C. Code Ann. § 11-915 (Supp. VIII, 1960).

91 D.C. Juv. Ct. Ann. Statistical Rep., Table 10 (1960).

92 Ibid.

93 See Receiving Home Population as of October 7, 8 and 9, 1960 (daily statistical report sent to Juvenile Court by Home officials). A sampling of the more aggravated cases reveals incarcerations of 87, 68, 56, 50, 40 and 37 days.

The speed with which the one judge in Juvenile Court must handle each case, together with the duty of supervising the administrative facilities of the entire court, leads to further informality in the courtroom. While the petition is being read by the clerk, the judge is often compelled by his limited time to consult with another official of the court in order to dispose of paper work or orders relating to other cases.[94] Corporation counsel presents his evidence, usually having the witnesses state what happened in narrative form. Opposing counsel has the right to cross-examine, but more often than not it is the judge who asks the pointed questions, seeking to uncover essential facts buried by the lapse of time between offense and trial. On the rare occasions when a police officer appears on the stand, it is normally not the arresting officer but a member of the Juvenile Squad, who relates what the arresting officer told him, together with other relevant information he may have seen or heard.

The juvenile frequently takes the stand although it does not appear that he could be required to testify if it were not his wish. While numerous foreign jurisdictions have denied juveniles the fifth amendment protection against self-incrimination,[95] no decision has yet issued on the point in the District of Columbia. As noted earlier, the *Mallory* rule,[96] forbidding the use of statements made during an illegal detention, is not applicable in Juvenile Court.[97] Hearsay evidence is admissible, but the social worker is not permitted to read the report containing privileged material either before or during the determination of the juvenile's delinquent status.[98] In practice, the rules of evidence seem to be solely within the discretion of the judge. Perhaps the best description of the evidentiary

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[94] An average of eight to twelve minutes only can be devoted to each case or hearing. This figure is drawn from time spent on all the diverse proceedings before the court, and is low partially because of the large number of guilty pleas entered. Hearings on S. 1456 Before the House Committee on the District of Columbia, 86th Cong., 1st Sess. 14 (1959) (Statement of Judge Orman Ketcham, Judge of the Juvenile Court for the District of Columbia). See also Hearings on S. 1456, at 85. Testimony of Mrs. Quenstedt, Assistant Corporation Counsel for the District of Columbia, in reference to Judge Ketcham's predecessor: "I have seen 86 new cases involving children go through in one day, and I know it has been a terrific grind for one judge to handle the large number of cases in that court."

[95] E.g., In re Holmes, 379 Pa. 599, 109 A.2d 523 (1954); People v. Lewis, 260 N.Y. 171, 183 N.E. 353, 260 N.Y. Supp. 171 (app.) (1932).

[96] Mallory v. United States, 354 U.S. 449 (1957).

[97] Pee v. United States, 107 U.S. App. D.C. 47, 52, 274 F.2d 556, 560 (1959).

[98] In re Sippy, 97 A.2d 455 (Munic. Ct. App. D.C. 1953).

rules used in Juvenile Court is that they "follow the rules of evidence which apply in administrative law cases to a greater extent than in criminal cases."[99] As might be expected, current practice in the Juvenile Court is to adhere less strictly to the rules of evidence where trial is had without jury. Moreover, the court will carefully examine self-incriminating statements made by the child for assurance that they are voluntary, although no constitutional or statutory provision compels such inquiry.[100]

After the evidence is in and final argument or statement made, the judge instructs the jury and a verdict will be returned; in the absence of a jury, the judge will make his own decision. In the latter case, no specific findings of fact are made—either the child committed the offense or he did not. In most cases, this decision is reached by the judge without leaving the bench and within a few moments. If a determination of delinquency is reached, the social worker, with his report and opinion, comes before the court.

The social worker's report normally includes the background of the child, *e.g.*, family, surroundings, previous difficulties, the progress of the child over the period of consultation, and a recommendation as to his future treatment. On the basis of this report and recommendation, the offense involved, previous record, and any other relevant material before the court, the judge determines what disposition is to be made. Except in the most unusual type of case, the decision is reached within a few moments. Although the decision is often difficult and clearly of great importance to the child's future, the throng of people in the hall outside the courtroom waiting their turn before the court does not permit the judge the luxury of prolonged meditation.

Many avenues are opened to the judge in making this disposition. The child may be placed on probation, committed to the Department of Public Welfare, or returned to the custody of his parents, relatives or other fit person. If the child appears to need mental or physical care, the judge may have him committed to the D.C. General Hospital for treatment or a determination that the child should be committed to a mental

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[99] Hearings on S. 1456 Before the House Committee on the District of Columbia, 86th Cong., 1st Sess. 89 (1959) (statement of an assistant corporation counsel for the District of Columbia).

[100] The elimination of the fifth amendment right from juvenile proceedings and the Juvenile Court's refusal to give it even token application in other jurisdictions has elicited dissents of great eloquence. People v. Lewis, 260 N.Y. 171, 179, 183 N.E. 353, 356, 260 N.Y. Supp. 171, 179 (app.) (1932) (Crane, J., dissenting); In re Holmes, 379 Pa. 599, 610, 109 A.2d 523, 528 (1954) (Musmanno, J., dissenting).

institution. The latter determination may indirectly result in confinement in such an institution for an indefinite period of time. If neither hospital nor mental institution appear desirable or necessary, the child may be placed in a qualified private agency or institution at no public expense, sent to the Children's Center in Laurel, Maryland, or to the National Training School for Boys. The Juvenile Court judge also has the power to send the child temporarily to the D.C. Jail[101] where rehabilitative prospects seem, at the very least, doubtful. Finally, the judge may make "such further disposition of the child as may be provided by law and as the court may deem to be best for the best interests of the child."[102] This provision of the Juvenile Court Act was probably intended to embrace those *ad hoc* situations requiring a remedy tailor-made to the child's difficulty.

In general then, the juvenile in court faces a paternalistic type trial. However, the introduction of sociological concepts into courtroom procedure has created a danger that invites the imposition of legal safeguards. The presence of such concepts should not replace the rules of procedure and evidence which have been established to insure accuracy and fairness in the courtroom, but rather should complement them. Here, more than anywhere else in the processing of juveniles, a need appears for the practical integration of essential safeguards to insure an accurate finding that the accused juvenile has committed the offense. The urgency of this need becomes more apparent in view of the following section of this note.

VI

THE TRANSFER CASES

As indicated, this note does not purport to review juvenile procedure and treatment beyond the dispositive stage at which the judge determines a course of probation or commitment for a child offender. But one aspect of the post-disposition procedure merits attention since it threatens to destroy the very fabric of, and justification for, an informal juvenile system.

In 1941 the Court of Appeals for the District of Columbia held that the Attorney General's statutory power to transfer prisoners from one federal prison to another did not extend to the transfer to such prisons of juveniles committed to the National Training School for Boys, since exclusive jurisdiction and control over such juveniles was legislatively

[101] 52 Stat. 602 (1938), D.C. Code Ann. § 11-927 (1951).

[102] 52 Stat. 600 (1938), D.C. Code Ann. § 11-915(3) (1951).

vested in the Juvenile Court.[103] Chronically bad conduct on the part of the juvenile petitioner in the case, while he was an inmate at the National Training School, had triggered his transfer to the Lorton Reformatory. His writ of habeas corpus was sustained in the district court and affirmed on appeal.[104] Shortly thereafter, Congress responded to the decision by amending the statutory grant of power to the Attorney General to include specifically within it the power to transfer inmates of the National Training School,[105] and this amendment continues on the books.[106] An estimated 100 inmates of the School have been transferred to adult federal reformatories at Chillicothe, Petersburg, Danbury and similar institutions since the amendment reversed the determination of the court of appeals.[107]

Few decisions have appeared over this period to review the propriety of these transfers. Shortly after the amendment, it was held that the additional grant of power by Congress had inferentially repealed the section of the District of Columbia Code which subjects a juvenile committed to the National Training School to the exclusive jurisdiction of the Juvenile Court.[108] Then, in 1954, the District Court for the District of Columbia interpreted the amendment as having granted to the Attorney General power to designate places of confinement "limited to those where special facilities are provided for training and care, somewhat comparable to those provided by the National Training School for Boys, but with closer supervision where necessary for those that may prove to be otherwise intractable."[109] Assuming that the juvenile in the case, who was then temporarily lodged in the D.C. Jail, would be speedily sent to such a suitable place of detention other than the National Training School, the court discharged the juvenile's writ of habeas corpus without prejudice to renewal.[110] The writ was renewed when the boy was transferred by the Attorney General to the Federal Correctional Institution at Ashland, Kentucky, and the same court this time sustained the writ, on the ground that the Kentucky institution was "designed for the

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103 Huff v. Bryant, 74 App. D.C. 19, 121 F.2d 890 (1941).

104 Id. at 21, 121 F.2d at 892.

105 18 U.S.C. § 753(f) (Supp. I, 1940).

106 18 U.S.C. § 4082 (1958).

107 Hearings on S. 1456 Before Subcommittee No. 3 of the House Committee on the District of Columbia, 86th Cong., 1st Sess. 128 (1959).

108 Riley v. Pescor, 63 F. Supp. 1 (W.D. Mo. 1945).

109 White v. Reid, 125 F. Supp. 647 (D.D.C. 1954).

110 Id. at 651.

custody of persons convicted of crime" and would therefore involve a prohibited commingling of juveniles with criminals.[111]

Despite the interpretation placed on the Attorney General's power by these decisions, a different judge sitting five years later held that the Director of Prisons of the United States is authorized by law[112] to transfer inmates of the National Training School to any federal institution, whether a place of incarceration for adult criminals or not.[113] The institution involved in this instance was the Federal Reformatory of Chillicothe, Ohio. But another 1959 decision of the district court disagreed with this result, holding that the federal statute relating to the powers of the Attorney General does not apply to juveniles committed under the District of Columbia Code provision since "no adjudication upon the status of any child shall be deemed conviction of a crime."[114]

Then in April of 1960, on the ground that jail was an improper place for a child, district court Judge Youngdahl sustained a writ of habeas corpus filed by a juvenile petitioner who was in the D.C. Jail, under the Attorney General's power, pending a determination of whether his National Training School parole should be revoked.[115] In agreement with the earlier district court decision of 1954,[116] Judge Youngdahl construed the amendment as not authorizing the detention of a National Training School parolee at *any* institution, but only at the National Training School or another institution with substantially similar facilities. The decision noted that a "grave constitutional question" would attend a literal application of the amendment,[117] and pointed out that the relaxation of constitutional safeguards in juvenile proceedings can only be justified if the proceedings are absolutely noncriminal.

The keynote is struck by this observation. Clearly an informal "civil," "rehabilitative" process of arrest, trial and confinement totally breaks down under the weight of its own hypocrisy if its end result is the incarceration of a youth in an adult criminal reformatory. This conclusion is unavoidable, barring a redefinition of benevolence and "guardianship imposed by the state as *parens patriae*."[118] Perhaps the most

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111 White v. Reid, 126 F. Supp. 867, 871 (D.D.C. 1954).

112 18 U.S.C. § 4082 (1958).

113 Clay v. Reid, 173 F. Supp. 667 (D.D.C.), appeal dismissed, 106 U.S. App. D.C. 298, 272 F.2d 527 (1959).

114 Cogdell v. Reid, 183 F. Supp. 102 (D.D.C. 1959).

115 Kautter v. Reid, 183 F. Supp. 352 (D.D.C. 1960).

116 White v. Reid, 126 F. Supp. 867 (D.D.C. 1954).

117 183 F. Supp. at 354.

118 White v. Reid, 125 F. Supp. 647, 649 (D.D.C. 1954).

penetrating legal statement yet made in this regard was uttered by the late Judge Bolitha Laws:

> To send a juvenile to the usual penitentiary where hardened criminals are kept in close confinement and under special types of strict discipline, where the juvenile would inevitably come into contact with them and suffer the same type of treatment as they do, would in effect stamp the case of the juvenile as a criminal case except insofar as his records would be protected from public disclosure. *In such criminal prosecutions,* constitutional safeguards must be vouchsafed the accused.[119]

This view is unofficially favored among Juvenile Court personnel. In an informal effort to circumvent further transfers from the National Training School to adult prisons, Juvenile Court Judge Orman Ketcham early in 1960 reached an agreement with the Bureau of Prisons whereby his sentences to the School were not to exceed 18 months or to extend through the juvenile's 18th birthday, whichever involved the longer time.[120] The purpose of such limitation was to attenuate the overcrowded conditions that plagued Bureau officials in their management of the school. In return, the Bureau, an agency subordinate to the Attorney General, gave assurance that the transfer of inmates to adult reformatories would not take place without the consent of Judge Ketcham. But no legal force attaches to the agreement; thus while the sentences have been limited to the stipulated periods, the Bureau has continued the practice of transfer with only minimal consultation with the judge.

Appellate confirmation of the recent district court views limiting the Attorney General's power of transfer is thus to be strongly desired. Or, in the alternative, a system already suspiciously close to a criminal process should be openly declared as such and the presently omitted constitutional protections should be afforded those subjected to its grip. As matters stand, the ends, transfers to federal prisons, and the means, the relaxed and unguarded treatment of juveniles, are in theory mutually exclusive, but in practice glaringly coexistent.

CONCLUSION

The single most striking factor one encounters in this hope-generated juvenile system is the dissatisfaction with it expressed by every person officially involved. This reaction on the one hand proves that the system does not function successfully, yet on the other it reveals that the men and women involved dearly wish the situation were different. The lack of indifference is dissatisfaction's healthy aspect. But the cold facts are

[119] Id. at 650-51. (Emphasis added.)

[120] See Statement of Procedures Regarding Commitments by the Juvenile Court of the District of Columbia to the National Training School for Boys, June 10, 1960.

that the police feel hampered, and are aware of the questionable propriety of some of their procedures, despite the undeniable concern they bring to the job; that the judicial personnel is not able to work the fifteen-hour day requisite to any truly adequate attention to the cases; that the Social Service personnel labor in the classic situation of limited men facing unlimited difficulties, speaking only numerically. These are the few problems which this necessarily abbreviated study has encountered; many more doubtless exist beneath the philosophical facade justifying the practices and proceedings regarding District juveniles. To unearth these problems, as well as to cope with those delineated in this article, is a project awaiting the illumination of a civic-committee inquiry.

Such a study may well consider a practical integration of the Bill of Rights guarantees relating to criminal proceedings with the basic philosophy of the Juvenile Act. Tailoring conventional constitutional safeguards to implement the act would serve to circumvent questionable administrative and judicial procedures developing as a consequence of an overwhelming case load. Additionally, the District's appellate courts, although they have shown an admirably expressed interest in juvenile processes in recent years, may be well advised to base their appraisals of these processes less on the theory of the Juvenile Court Act than on the practices of the authorities operating under or in conjunction with it.

Finally, the Congress of the United States must bring a more expansive point of view to the threatening lack of manpower now available for Juvenile Court judicial and administrative social work. Since 1906 when the court was established, only one judicial position has been deemed necessary for the adequate discharge of juvenile casework, despite a population growth over the years of from 300,000 to 880,000 in the city, 350,000 to 2,100,000 in the metropolitan area, and an increase in judgeships from 7 to 16 in the Municipal Court, from 5 to 15 in the United States district court, and from 3 to 9 in the United States court of appeals, and the establishment of a three-man Municipal Court of Appeals. The number of D.C. residents below the age of 18 alone is today estimated at 250,000. In the view of some legislators a juvenile court should perhaps perform with the machined logic of a chiclet dispenser, but other informed sources believe not unjustifiably that implementation of the system's philosophy should be conditioned not by whether one judge can equal the world mark for the number of cases handled in a year, but by some minimal interest in child welfare.

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